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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Annual report of the United Nations High Commissioner for Human Rights

Addendum

Situation of human rights in Colombia*

Summary

In the present report, the United nations High Commissioner for Human Rights commends the Government of Colombia for its determined pursuit of a negotiated end to the internal armed conflict and the ongoing efforts made to meet its international human rights obligations.

Many human rights violations linked to the internal armed conflict could be ended or greatly reduced if the progress made in the peace negotiations leads to well conceived and implemented peace accords. An end to hostilities would also create a unique opportunity to address human rights more broadly. The High Commissioner illustrates the difficulties of moving from a counter-insurgency culture to one where rights-holders and duty-bearers work to address human rights challenges together.

The High Commissioner analyses and offers lessons learned with regard to the mass demonstrations that characterized 2013. She welcomes the positive developments witnessed in the area of victims' rights, while identifying remaining shortcomings and challenges. She also emphasizes serious human rights concerns, including the attempt to expand military criminal jurisdiction and the situation of human rights defenders and of land restitution claimants.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is reproduced in English and Spanish only.

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The High Commissioner concludes the report by recommending the continuation of efforts to increasing collaboration with and among national and local authorities, victims and civil society with a view to improving the situation of human rights for all in Colombia.

Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia

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I. Introduction

1. In July 2013, the Government of Colombia and the United Nations High Commissioner for Human Rights renewed the 1996 agreement that established the Office of the High Commissioner in Colombia (OHCHR-Colombia) until 31 October 2014. While reiterating the original mandate, the High Commissioner and the Government agreed to intensify the work of OHCHR-Colombia in regions facing particularly complex human rights problems, and cooperation with the Presidential Programme on Human Rights to create local human rights progress indicators and benchmarks.

2. In April 2013, Colombia participated in its second cycle of the universal periodic review. Colombia was commended on the progress that it had made towards ending the armed conflict and implementing the Victims and Land Restitution Law, as well as its ongoing commitment to work with OHCHR. At the same time, Council Members expressed their concerns about military justice, impunity and the situation of human rights defenders.

3. The High Commissioner visited Colombia in July 2013, when she met with national and local authorities, human rights defenders, survivors of human rights violations, and representatives of indigenous and Afro-Colombian peoples and peasant organizations. She acknowledged the progress made by Colombia in the promotion of human rights, and encouraged ongoing work between the State and civil society.

II. Context

A. General

4. Peace negotiations with the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) marked their first anniversary in November 2013. Agreements were reached on two of the six agenda items (rural development and political participation). After more than 50 years of conflict, achieving peace appears at times more difficult than continuing the conflict. Institutions and attitudes reflect generations of armed conflict. Mistrust runs deep and is perhaps the greatest obstacle to peace. The possibility of negotiations with the National Liberation Army (ELN) was announced in 2013.

5. If properly elaborated and implemented, the peace accords eventually reached with FARC-EP and ELN will have an enormous potential for improving the situation of human rights of all in Colombia. A post-conflict scenario needs to envisage a new engagement between Colombia and OHCHR, and possibly with the United Nations as a whole. New modalities of work would include defining the mission completion strategy of OHCHR-Colombia in a successful and orderly manner.

6. The period under review was characterized by mass social protests organized by numerous sectors on various issues. During the demonstrations, OHCHR-Colombia, in coordination with other United Nations entities, and in particular the United Nations Development Programme (UNDP), helped actively to build bridges between protesters and the Government to foster dialogue and prevent violence and human rights violations. Important lessons can be drawn from the organization of and response to the protests. The High Commissioner commends the fact that all the protests ended through negotiated agreements aimed at addressing demonstrators' claims.

7. The current panorama of peace, social mobilization and polarization with regard to such sensitive issues as justice will define the agenda of electoral campaigns for upcoming

presidential and legislative elections, to be held in May and March 2014, respectively. In November 2013, President Santos announced his intention to run for a second term.

B. Activities of the Office of the High Commissioner

8. OHCHR-Colombia continued to contribute to positive human rights change in 2013 through its monitoring, advocacy, public statements, good offices and technical cooperation, including training and advice. Office priorities were identified through monitoring, analysis and constant consultation with victims, State authorities and civil society. OHCHR-Colombia provides an impartial, principle-based voice to assist duty-bearers and rights-holders. It offers human rights-related information in close to real time to State partners on advances and difficulties in order that corrective action may be taken.

9. The activities conducted by OHCHR-Colombia arise from the three interrelated pillars of the United Nations: peace, human rights, and development. On the basis of an agreement with the Government and in response to the requests of local authorities and civil society, OHCHR-Colombia opened three additional field offices: in Quibdó, to address the situation of Afro-Colombian and indigenous peoples, and social conflict linked to mining; in Barranquilla, to better support land restitution efforts in the Caribbean region; and in Neiva, to increase human rights monitoring and intervention capacity in conflict-affected Putumayo, Caquetá, Huila and Tolima.

10. Social protests highlighted the importance of the preventive work of OHCHR-Colombia as an impartial third party. For example, OHCHR helped to facilitate the initiation of negotiations, was part of the process to reach and monitor agreements as a guarantor, and worked within the United Nations system contributing to conflict prevention and resolution.

11. In order to maximize its strategic impact with duty-bearers and rights-holders, OHCHR-Colombia has prioritized approximately 80 communities afflicted by human rights violations by various actors. The majority are in rural areas and municipalities with especially limited resources. Replicable good practices are documented in order to facilitate positive human rights change throughout the country.

C. Government and State institutions

12. OHCHR-Colombia collaborates with as many State institutions as possible. However, lack of coordination among those institutions and unwillingness to accept responsibility for human rights violations undermine further advances in human rights. The national human rights system, established in November 2011, is an important institutional development aimed at defining common goals and responsibilities, creating baselines and indicators to measure the achievement of objectives. In 2013, OHCHR-Colombia continued to support this process, and the tripartite effort between State, civil society and international community that resulted in the initiative "From violence to a society of rights: a 2014-2034 comprehensive human rights policy", officially launched in December 2013.

13. The State has robust human rights architecture that is, however, more accessible in urban than in rural areas. For example, there are 1,102 municipalities in Colombia, each with a local ombudsperson. In Medellin, the local ombudsperson's office operates 24 hours, seven days a week, with a staff of approximately 60. By contrast, 90 per cent of local ombudspersons, who commonly face the most complex of human rights situations, operate in their municipalities with the scarcest resources, usually with entirely inadequate materials and human resources. OHCHR-Colombia advocates for legislative change so that

local ombudspersons are provided with the resources on the basis of the human rights challenges actually faced, rather than of municipal income.

14. Today, the national Ombudsperson's Office has an annual budget of $167 million and 1,220 staff; the Procurator General's Office, $242 million and 3,800 staff; the Victims' Unit, $770 million and almost 1,800 employees; the Attorney Generals Office', just over $1 billion and more than 25,000 staff; the anti-poverty agency - Department of Social Prosperity, just over $1.2 billion and more than 1,200 staff; and the security forces, $15.4 billion, of which $3.9 billion go to the police. The armed forces have approximately 398,000 members, and the police 167,000. An end to hostilities will provide the opportunity to reprioritize human rights, peace and development in the national agenda and budget.

III. Situation of human rights

A. Overview of the situation directly related to the conflict

1. Victims

(a) Peace and past violations

15. As at December 2013, there were 5,966,211 victims of armed conflict registered in the Single Registry for Victims, of whom 5,155,406 were forced displacement victims. Estimates by non-governmental sources are significantly higher. The continuing conflict creates additional victims daily. According to the Registry, 55,157 people were displaced between January and October 2013.

16. In 2013, the Constitutional Court upheld the constitutionality of the Legal Framework for Peace, which defines the State's approach to the post-conflict situation.

17. According to international human rights law, the State has a duty to prevent future violations; there is therefore a need to end the armed conflict. International human rights law also establishes that victims have the right to an effective remedy.

18. In 2013, legal, academic and media debates centred on an abstract question of how much prison time people responsible for human rights crimes should serve. Such considerations crowded out necessary thought and debate on essential issues relating to past violations, including the purpose of punishment; how criminal justice may effectively address past violations; the structural changes needed to ensure non-repetition, including the total demobilization of illegal armed groups and vetting of State agents linked to past human rights violations; the transformations necessary to dissuade people from joining illegal armed groups; and how to use the truth documented in academic studies to generate political and popular recognition and transformations in survivors' lives.

19. To a large degree, prosecutions and the threat of prosecution have had a very limited impact on the number and level of human rights violations committed by State, guerrilla or paramilitary actors during the conflict. Most human rights violations remain in the preliminary stage of investigation. Law No. 975, known as "Justice and Peace Law", on demobilized paramilitaries, appears to have served as a vehicle for truth, but not significantly as an instrument of criminal justice. In fact, almost all of the accused will most likely be released after eight years without ever having gone to trial.

20. The purpose of criminal law in post-conflict Colombia should be clearly articulated and examined from a human rights perspective. The State should find the right balance between prevention, punishment and rehabilitation, restoration and reparation.

21. Some high-ranking officers and soldiers in the armed forces are still linked to proceedings for past human rights violations, including for extrajudicial executions known as "false positives". The peace negotiations present an opportunity to improve further the professionalism and legitimacy of the military by removing such individuals from service.

22. International experience has shown the importance of providing long-term alternative and differential livelihood opportunities to demobilized persons while attending to the rights of victims. Post-conflict mechanisms are often criticized for benefiting the perpetrators only. For this reason, jobs provided to those persons demobilizing should be linked to restoring the rights of victims.

23. OHCHR-Colombia welcomed the report of the Centre of Historical Memory, entitled "¡Basta ya! Colombia, Memorias de Guerra y Dignidad", as an important contribution to clarifying the root causes of the armed conflict and reconstructing the truth. Various other initiatives, such as the regional "Acuerdos por la Verdad", and the centres for historical memory in Bogotá and Medellin should be commended. Truth-telling in Colombia, however, is generally received with apathy, which hampers accountability and non-repetition.

24. Given the sheer number of victims, the State's planned response is necessarily ambitious, especially in the area of reparations. OHCHR-Colombia acknowledges the efforts made in the two first years of implementation of the Victims' Law, particularly by the Victims and Land Restitution Units.

(b) Victims' rights

25. On the basis of its monitoring activities in 2013, OHCHR-Colombia submitted three reports to the Victims' Unit. They included summarized findings on the changes OHCHR had attempted to facilitate, results, and recommendations for action. In the reports, it examined individual and collective reparation processes, specific actions to provide redress for ethnic groups, and the space for the political participation of victims. OHCHR-Colombia established a victims' follow-up mechanism to oversee implementation of the recommendations at the local and national levels, and to measure collaborative results.

26. OHCHR-Colombia identified the widespread inadequacy of resources as a limitation for municipalities to meet their responsibilities as first respondents to victims' claims. Of the municipalities with greater resources, Bogotá and Medellin stand out as examples where victims are treated as rights-holders and their lives positively transformed.

27. Territorial plans of action on attention and comprehensive reparation for victims submitted by local to national authorities are vital to addressing challenges and coordinating assistance in implementing the Victims' Law. The majority of municipalities monitored, however, were not using this tool effectively to improve their capacity to respond to survivor's claims. A greater effort is needed to create an understanding of and capacity to apply this tool, which will be essential for effective implementation, particularly in the poorest rural municipalities and regions still significantly affected by the armed conflict.

28. The High Commissioner welcomed the decision made by the Constitutional Court in 2013 to instruct the Victims' Unit to register all victims of forced displacement regardless of the perpetrator.

(c) Land restitution

29. OHCHR-Colombia also submitted three reports based on its field monitoring to the Land Restitution Unit. In its reports, it examined the restitution process, the implementation

of collective measures for ethnic groups, and judicial land restitutions rulings and their impact. A joint follow-up mechanism was also created.

30. OHCHR recognizes the significant effort made to date by the Land Restitution Unit, specialized judges and magistrates: 277 rulings were adopted between December 2011 and October 2013. A number of challenges to guaranteeing the rights of land restitution claimants remain. Among the most serious are the limited capacity to work in areas still affected by the internal armed conflict; threats against and the killing of land restitution claimants and activists; the lack of inter-institutional coordination in the planning and execution of return efforts; and the need for access to stable markets for sustainable livelihoods.

31. OHCHR-Colombia observed an increased number of killings, threats and attacks against claimants, social leaders and public officials involved in land restitution processes. For example, in the department of Córdoba, two prominent victims' leaders from Valencia were murdered in a 20-day period in March and April 2013, just prior to the President handing over land deeds to displaced persons in that department. The killings undermined public trust in land restitution and in the State's ability to protect restitution claimants.

32. Adequate individual and collective protection measures and stronger State presence are required to guarantee return and non-repetition for families. In departments such as Bolivar, Cesar, Córdoba and Sucre, criminal interests constitute serious obstacles to restitution. There is therefore a need for the Attorney General's Office to redouble its efforts for prompt, effective investigations and prosecutions. The investigation and arrest of two well-known people associated with former paramilitary groups on the charge of land grabbing are an important step forward.

33. In 2013, the Governor of the department of Antioquia, the Mayor of Bogotá and the Colombian Family Welfare Institute developed institutional food procurement programmes with small farmers, including land restitution beneficiaries, which contribute to income generation and sustainability. OHCHR supported these efforts and encouraged other governmental entities and the private sector to become involved.

34. OHCHR-Colombia noted additional challenges to land restitution processes. For instance, in the Montes de Maria region and the Cesar, North Santander and Putumayo departments, third parties occupying land to be restituted are often themselves peasants and victims. Extractive industries and large-scale development projects are present in areas where land restitution to ethnic groups is planned, which may result in social conflict and human rights violations. There is also a need to ensure that women can exercise land restitution claims as direct rights-holders. Rather than emphasizing quantitative results, land restitution processes should focus on the quality of results, transforming victims' lives by ensuring their ability to exercise their full range of rights in a sustainable manner. Sustainability will be assured by the successes enjoyed by victims.

(d) The voices of victims

35. It is essential that victims feel that their rights have been restored. In 2013, many expressed the need for their voices to be heard in the peace negotiations, especially on issues affecting their rights. In particular, indigenous and Afro-Colombian peoples and women's organizations expressed scepticism about the participation mechanisms for victims developed by the negotiating parties. OHCHR-Colombia has been working with the United Nations system and the High Commissioner for Peace of Colombia to develop a process to better integrate the perspectives of victims into the peace process.

2. Acknowledgement of present and past violations

36. Despite the peace negotiations, internal armed conflict-related violations persisted in 2013. Military actions by the parties to the conflict continued to have deleterious consequences for the security and human rights of the civilian population.

(a) Current human rights violations: FARC-EP and ELN

37. OHCHR-Colombia continued to remind FARC-EP and ELN of their obligations to respect international human rights law and international humanitarian law. Violations attributed to FARC-EP and ELN and their exercise of social control over the population in rural areas with little government presence were documented. OHCHR-Colombia registered many violations, inter alia, killings of protected persons, the recruitment and use of children, hostage-taking, the use of mines and other improvised explosive devices, indiscriminate attacks, forced displacement and individual and collective confinement. Attacks on civilian infrastructure affected the entire range of human rights.

38. Selective killings attributed to FARC-EP, particularly of indigenous leaders, continued in the department of Cauca. During the first semester of 2013 alone, OHCHR-Colombia registered eight killings of members of the Nasa people, three of whom were leaders, in the north of the department. In addition, by November, the number of registered threats against indigenous leaders and authorities attributed to FARC-EP had risen to 190.

39. The Ombudsperson's Office documented an increase in child recruitment. Facilitating the disengagement of children from armed groups and ensuring their reintegration with full respect for their rights must be a priority.

40. According to the Presidential Programme for Comprehensive Action against Anti-Personnel Mines, by November 2013, there had been 285 mine incidents, resulting in 94 male and 13 female civilians wounded, and 13 dead, including three women. A total of 147 police and military members were injured and 18 killed. The most affected departments were Antioquia, Arauca, Bolivar, Caquetá, Meta, Nariño and North Santander.

(b) Past human rights violations: FARC-EP

41. During the peace negotiations, FARC-EP indicated that it could acknowledge responsibility for past human rights violations, for example, by declaring that the widespread use of kidnapping might have been a mistake. Further acknowledgements by FARC-EP and other armed groups, as well as actions to stop current violations, are needed.

(c) Current human rights violations: armed forces

42. Progress has been made in recent years in strengthening the human rights culture within the military. This progress can be attributed to the efforts made by soldiers, non-commissioner officers, officers, politicians, victims, prosecutors and investigators, the judiciary, civil society and the international community. While often working from different perspectives, the result has been a reduction in the number and gravity of violations documented.

43. OHCHR-Colombia interacts with the armed forces on a daily basis, in an open, productive and frank relationship. Nonetheless, cooperation on prevention is more fluid than that in addressing current and past violations. OHCHR is concerned that some military authorities only regard as human rights violations those extrajudicial executions in the modality of "false positives", a position that is inconsistent with the State's international obligations. Another matter of concern is that, despite the information available, the Ministry of Defence and military authorities continue to report no human rights complaints

annually. There is therefore a need to move from denial to recognition and response with regard to current and past violations.

44. Respect for the rights to life and integrity of the civilian population during military operations continues to be a cause for concern. OHCHR-Colombia observed situations of alleged arbitrary deprivations of life resulting from a lack of planning, of military discipline, and of command and control. For example, on 15 May 2013, in La Fonda, Patía (department of Cauca), a 19-year old farmer died when members of the 29th Mobile Brigade shot him at a checkpoint, allegedly because he ignored a call to stop. In Caldono (department of Cauca), on 30 March, a 57-year old Nasa male from Kiwea Sat Tama reservation was shot dead by members of the 29th Mobile Brigade. In her previous report, the High Commissioner referred to similar cases.[1] On 5 May, in Tierralta (department of Córdoba), a man traveling home by motorcycle died after being shot by members of the 11th Battalion. On 4 June, in Puerto Claver, El Bagre (department of Antioquia), two hunters were shot by members of the army, one fatally. On 22 July, in Nuevo Horizonte, Fortul (department of Arauca), a 61-year old man was shot dead on his own property by a soldier. OHCHR-Colombia notes that criminal and disciplinary proceedings initiated in these cases remain at a preliminary stage.

45. OHCHR is concerned that, even if these cases were considered "military errors" or "unavoidable errors", in practice, military commanders have not fully assumed the corresponding institutional responsibilities with regard to truth, justice, discipline, redress and non-repetition. Furthermore, a similar approach seems to have been taken in internal army investigations relating to the use of the firearms during the demonstrations held in 2013. As the High Commissioner has previously reported,[2] the concepts of "military error" and "unavoidable error" irrespective of the result of disciplinary or criminal investigations, do not preclude the State's accountability for a violation of international humanitarian law and human rights law, and towards victims.

46. OHCHR-Colombia continued to receive information on illegal interrogations of child members of guerrilla groups in the department of Cauca. OHCHR-Colombia continued to receive complaints of the arbitrary detention of young males, including conscientious objectors, during irregular military recruitment procedures. If such allegations were to be proved, they would be a violation of Constitutional Court rulings, including a new decision made in July 2013,

47. In June 2013, OHCHR-Colombia submitted to the Ministry of Defence a report on 32 recent cases that had been monitored, involving the use and occupation of schools and other civilian infrastructure by the military around the country. OHCHR-Colombia notes that the few investigations still open on these cases remain at the preliminary stage, while the majority has been closed without charges having been laid.

48. In February 2013, OHCHR-Colombia submitted to the Minister of Defence and the General Commander of the Armed Forces a final report on a two-year joint project on the effectiveness of seven military prevention and control mechanisms in the field of human rights. In the report, OHCHR highlighted the continued relevance of existing mechanisms, while identifying shortcomings in their use. OHCHR-Colombia has received preliminary information regarding implementation of the recommendations, and trusts that it will continue working with the Ministry in this regard.

49. While the High Commissioner recognizes the progress made in certain areas, she remains concerned at the apparent reluctance of military authorities to address ongoing

[1] See A/HRC/22/17/Add.3, para. 47.

[2] Ibid., paras. 42 – 47.

problems. In the context of the peace negotiations, it will be essential for the armed forces to acknowledge violations of human rights and international humanitarian law, including in the context of legitimate operations, and to take action to ensure institutional and individual accountability.

(d) Past human rights violations: armed forces

50. While the State generally takes ensuring the conformity of its laws with its international human rights obligations seriously, this was not the case of the constitutional reform to expand military criminal jurisdiction. In October, the Constitutional Court declared the reform unconstitutional for procedural reasons. The High Commissioner and 11 special procedures mandate holders had indicated that the reform was inconsistent with decades of legal developments nationally and internationally. Reactions from some government officials to the Court ruling were sometimes disrespectful of the separation of powers. The Minister for Defence announced the Government's decision to pursue new reform in 2014.

51. From January through August 2013 48 cases of homicides attributed to the army, characteristic of "false positives", were transferred from ordinary to military jurisdiction, despite Government assurances that this would not occur. Numerous other cases were transferred directly by civilian prosecutors. It is worth noting that a magistrate of the Superior Council of the Judiciary, the organ competent to rule on civilian-military jurisdictional conflicts, was forced to resign when it was revealed that he had promised a military officer under criminal investigation for an alleged extrajudicial execution assistance in transferring his case to the military courts.

52. In December 2013, following the Court decision on military justice reform, Congress rushed through the adoption (supported by the Government) of a legal aid system for security service members facing criminal charges or international proceedings. OHCHR-Colombia has called continually for the free and impartial legal aid programme run by the Ombudsperson's Office to be extended to all, including the military, to avoid risks under the approved system of subordinating the defence of individual soldiers to the interests of institutional or commanding officers. OHCHR continues to receive army members who fear coming forward or giving full testimony on cases of extrajudicial executions. The High Commissioner noted that, in October 2013, the Inter-American Human Rights Commission accorded precautionary measures to an active army member participating as a witness in cases of extrajudicial executions as a result of threats and harassment.

53. With regard to the responsibilities of the military for past violations, the High Commissioner regrets the impunity afforded by the continued granting of illegal privileges to military members detained or imprisoned in military facilities two years after the recommendations of a special inter-institutional report on this problem in Tolemaida.

B. Overview of the situation indirectly related to the conflict

54. Although the issues discussed in the present section have been compounded by the armed conflict, they will not be resolved automatically by peace. Nonetheless, an end to hostilities will create a unique opportunity to address these problems by redirecting resources and political capital, and reforming the counter-insurgency logic that permeates State institutions and society.

55. The Government put the security of citizens on the national agenda when it established the Presidential Advisory Office on Citizen Security and Coexistence in 2010, as well as by means of the development and partial implementation of a national policy in

2011, and by anchoring the concept as a foundation of the National Police. Much, however, remains to be done for the State as a whole to conceive security as a situation where people live free of the threat of violence and crime, and where institutions have the capacity to guarantee and protect rights. In post-conflict Colombia, the National Police must grow and be strengthened, while military involvement in citizen security activities should be minimized through regulation and oversight. Furthermore, arms control and private security oversight systems require reform.

1. Rights-holders

(a) Social movements and protests

56. Mass social protests enacted by a variety of social sectors were a feature of 2013. These demonstrations, and the reasonable manner (for the most part) in which they were conducted confirmed that there is political space for democratic protest in Colombia. The first demonstrations to be held, in February, were by coffee growers. In June, approximately 10,000 farmers from Catatumbo, one of the poorest regions in Colombia, blocked roads for 53 days. In July, protests flared in the mining sector. In August, the farming and agriculture sector declared a national strike, and was soon joined by transport, education, fisheries, health, indigenous and Afro-Colombian peoples, and other sectors. Protesters mainly demanded a reorientation of the country's development agenda, participation in public policy and decision-making, agrarian and rural reform and alternatives to growing coca and the forced destruction of coca plants.

57. In October 2013, a large number of indigenous peoples and organizations staged demonstrations to demand the implementation of their constitutional rights, in particular those associated with territorial autonomy.

58. In August, the first ever National Congress of Black, Afro-Colombian, Palenquero and Raizal peoples was held to draw attention to the need to fully implement Law No. 70 of 1993 on the recognition and protection of the collective and ancestral land and cultural rights of Afro-Colombians.

59. In general, demonstrations were peaceful and respectful of the rights of others. In some cases, however, human rights violations by security forces, and excesses by protesters were committed. Good and bad practices could be found in the organization of and response to the protests.

(i) Good practices

60. All the protests ended through negotiated agreements and processes aimed at addressing the claims of demonstrators. Importantly, the agreements reached with indigenous peoples were aimed at implementing their constitutional rights, which have yet to be fully respected. Confidence-building accords reached in Catatumbo represented a crucial first step to resolving long-standing issues. In these cases, follow-up mechanisms were or are being established.

61. State entities and social movements requested that OHCHR, in coordination with other United Nations entities, and in particular UNDP, serve as guarantor for many of the agreements reached. The role of OHCHR-Colombia varies, but relates principally to facilitating dialogue between demonstrators and the Government, and assisting them in reaching and implementing agreements. For example, in July, the Vice-President and farmers' organizations requested OHCHR-Colombia to witness their talks in Catatumbo at a time of tension, road blockage and clashes. Effective implementation of agreements is necessary for confidence-building, as well as for reducing gaps, marginalization and discrimination in the enjoyment of the full spectrum of human rights.

62. In the context of the nationwide indigenous mobilization in October, interventions by the United Nations, including OHCHR, in building trust between parties was crucial to the resumption of dialogue between indigenous peoples and civilian, police and military authorities, which led to important agreements from a human rights perspective. Since November, OHCHR-Colombia and the United Nations Resident Coordinator have acted as guarantors of the agreement between the national indigenous organization of Colombia and the Government.

(ii) Bad practices

63. In some cases, planning, management, command, control and communication before and during the demonstrations among the civilian authorities, the police and the military were inadequate, leading to excessive use of force and other human rights violations. In many cases, the departmental and municipal civilian authorities did not exercise their constitutional responsibilities by guaranteeing public order and human rights. On occasion, instructions from national authorities to end protests by force undermined the initiatives taken by local authorities and dialogue initiated by the police.

64. OHCHR-Colombia documented the shooting and death of nine protesters, five bystanders and one policeman (all male) during the demonstrations. In addition, a male motorcyclist died after hitting an obstacle placed in the road by protesters, and an injured man in an ambulance died when unable to reach a hospital. More than 400 people, including members of the security forces, were injured by rocks, tear gas, rubber bullets and firearms. Violence was also witnessed during house-to-house searches, as wall as the destruction of protesters' and bystanders' property.

65. The High Commissioner is concerned at the repeated public statements made by senior government officials during the protests according to which armed groups were behind events. It should be noted that an estimated 250,000 people participated in the June protests, and 837 were arrested, of which 54 were remanded into custody. Most charges related to violence and the destruction of property. No one was charged with crimes related to membership of an illegal armed group. OHCHR-Colombia emphasized repeatedly that the enjoyment of the rights to freedom of peaceful assembly, association and expression are fundamental aspects of democracy, and called upon the Government to focus on responding to the political and social demands motivating the protests while individualizing criminal responsibilities, without making generalized public statements that risk causing stigmatization.

66. In September, during the protests, the Ministry of Defence proposed reforms to the criminal code to increase penalties against demonstrators. The High Commissioner reminds the Government that the organizers of peaceful protests should not be held liable for violent behaviour committed by others. Instead, the police have the duty to identify and remove violent individuals, and to allow protesters to exercise peacefully their rights.

67. The High Commissioner thanks authorities and demonstrators for their confidence during times of high tension, and recognizes the particularly effective partnership between OHCHR and the Ombudsperson's Office.

(b) Human rights defenders

68. OHCHR-Colombia works on three fronts to increase the space available to human rights defenders. Firstly, it supports their efforts and takes action when defenders are stigmatized. Statements were made in support of, inter alia, stigmatized indigenous, farmer and LGBTI defenders. Secondly, OHCHR-Colombia works with defenders who have been threatened or suffered assassination attempts, advocating with the National Protection Unit of the Ministry of the Interior for more timely and effective measures of protection.

Thirdly, OHCHR-Colombia works with the Office of the Attorney General to support investigations into threats and attacks against and the killing of defenders.

69. OHCHR-Colombia continued to document attacks, threats, illegal surveillance and theft of information targeting defenders. In most cases, these cases were attributed to post-demobilization groups.

70. As at December, OHCHR-Colombia had confirmed 39 killings of defenders, including three women. Victims included land restitution claimants, rural community leaders, indigenous authorities and campaigners against mining and large-scale development projects. Some 36 defenders lived or worked in rural areas. Twelve received death threats before being killed, and at least 22 appeared to have been killed without a threat having been made beforehand. The information available indicates that two of those killed enjoyed measures of State protection. A third victim, a teacher, was awaiting relocation by the Ministry of Education as a measure of protection. Five other victims were associated with organizations that had already requested collective measures of protection.

71. According to the Foundation for Press Freedom (FLIP), in 2013, two journalists were killed, 58 received threats and three were forced into exile. Various journalists reported having been assaulted and/or prevented from carrying out their work by the security forces during the demonstrations. An attempt was made on the life of a journalist investigating ongoing illegal privileges in military prisons.

72. The number of defenders under the protection of the National Protection Unit dropped from approximately 3,500 in 2012 to 2,700 by October 2013. While the number of protected victims of the armed conflict, including land restitution claimants and activists and ethnic groups, rose, the number of protected trade unionists, journalists and non-governmental organization activists decreased.

73. OHCHR-Colombia registered important delays in the implementation of protection measures by the National Protection Unit, thereby increasing the risk for defenders. These delays were mostly caused by lengthy bureaucratic procedures and insufficient and late budget allocations by the Ministry of Finance. OHCHR welcomes initiatives to increase differential and collective measures of protection, including the strengthening of the traditional "indigenous guards" mechanism.

74. Prevention and protection are closely related, and generate responsibilities for various authorities. Greater coordination between relevant State entities, especially at the local level, is needed to ensure an immediate response and long-term protection. OHCHR-Colombia has initiated a project to improve defender protection coordination among these entities.

75. The success of the investigations conducted by the Office of the Attorney General of crimes against defenders remains insufficient. Very few investigations have actually led to the identification of the perpetrators, a situation that undermines prevention and protection. OHCHR-Colombia has knowledge of only one case of an alleged perpetrator being brought to trial in 2013, concerning the killing of an indigenous Jil leader in San José de Guaviare.

76. In October, the Supreme Court shelved a key investigation against a former intelligence director for alleged illegal interception inside Colombia of communications against numerous defenders, journalists, members of the political opposition and international human rights organizations on the grounds that the Office of the Attorney General had failed to comply with the legal time limits to prosecute the case. The ruling could have detrimental implications for other cases against senior government officials.

77. OHCHR-Colombia worked with the National Directorate of Prosecutions of the Office of the Attorney General in following up on 17 cases of crimes perpetrated against defenders, seven of whom were land restitution claimants. The Directorate has sought to

advance investigations by generating context analysis and encouraging dialogue between different prosecutors. Progress has, however, been insufficient.

2. Duty-bearers

(a) Police

78. OHCHR-Colombia welcomes the openness of the National Police to advice and cooperation on human rights issues, including the implementation of a joint project to evaluate internal control mechanisms. The principles set out by the new Director General in his inauguration speech – effectiveness, transparency, human rights and solidarity within a citizen security framework – are a sound basis for the future. In order to meet the demands of its constitutional responsibilities, with or without a peace agreement, it is necessary that the police intensify existing efforts to strengthen the institutional culture of human rights.

79. OHCHR-Colombia welcomes the leadership demonstrated by the Director General in a statement delivered in June before the Senate in relation to the killing in 2011 of a young street artist and subsequent cover-up: "We do not agree, nor do we condone this action by a member of the police. We request that those who diverged from institutional principles face the law. Colombia must have the police force that it deserves." OHCHR-Colombia notes, however, that a general allegedly implicated in the case was subsequently promoted by the Senate.

80. Challenges for the National Police in respecting and guaranteeing the rights to life and physical integrity remain. Of particular and recurrent concern were the actions by the Mobile Anti-Riot Squad (ESMAD). OHCHR-Colombia identified deficiencies at the strategic, operational and tactical levels, and in the coordination efforts of municipal authorities; command and control problems before, during and after the use of force; tactical indiscipline; and failures to meet international standards for the use of firearms, which resulted in alleged human rights violations.

81. On 11 January, in Los Olivos, Soacha, a 17-year-old boy was shot in the head and killed by the police. On 7 April, in San José, Bosa, a 17-year-old boy was shot in the chest during a police operation. On 22 June, during a demonstration by farmers in Ocaña, the police and the army shot several people at Aguas Claras Airport, two of whom subsequently died, when trying to protect an ESMAD member injured by protesters. Adequate planning and equipment, as well as tactical discipline, would have made options other than the lethal use of firearms available. During the same protest, on 25 June, two more people were killed in circumstances requiring clarification.

82. The National Police have requested the assistance of OHCHR-Colombia to continue to strengthen human rights and internal control capacity in 2014/15. This will include the issuance of a comprehensive regulation on the use of force and firearms that is compliant with international human rights standards.

(b) Justice system and criminal policy

83. While working with the Office of the Attorney General, OHCHR identified a number of challenges relating to criminal investigations, including the absence of case mapping; disjointed case distribution and assignment; the compartmentalization of individual cases; insufficient examination of command or criminal structures; limited physical reconstruction of crime scenes; unidentified victims; overburdened prosecutors and lack of investigators; insufficient prosecutor protection capacity; performance criteria based on procedural advances rather than prosecution results; prioritization by convenience; gaps in legal knowledge; inadequate knowledge of military structures and operations; and deference to military authority.

84. OHCHR observed additional obstacles to the full realization of the right to justice, including lack of independence of a number of trial judges; intimidation, threats and attacks against victims, witnesses, investigators, prosecutors and judges; destruction of and tampering with evidence; the stigmatization of prosecutors investigating military personnel for serious crimes; lack of inter-institutional support for ongoing investigations (for example, in access to documents); time-wasting tactics by the defence of military personnel (for example, failure to appear at hearings, resignation and periodic substitution of counsel, and frivolous requests for continuance); and obstructive use of military justice as a shield against civil prosecution.

85. State criminal and penitentiary policy appears to prioritize punishment rather than prevention, rehabilitation and restoration. OHCHR-Colombia notes the recent approval of the Penitentiary Code, which should focus on rehabilitation, and reiterates that prison terms are not always the most effective means to achieve non-recidivism or to prevent crime. OHCHR-Colombia insists on the importance of adopting restorative justice measures, as defined by the Constitutional Court in various decisions.

86. The High Commissioner is concerned about the implications of overcrowded prisons for the life and dignity of detainees and their families. National overcrowding rates are have reached 56.5 per cent, and rise to 88 per cent in some prisons outside Bogotá.

(c) Corporate actors

87. OHCHR-Colombia has begun to work on business and human rights following the endorsement by the Human Rights Council's, in its resolution 17/4, of the Guiding Principles on Business and Human Rights as a means to implement the United Nations "Protect, Respect and Remedy" framework. OHCHR-Colombia works in a number of its prioritized communities where businesses have undermined human rights and do not acknowledge their obligations; recognized the need to conform to human rights standards; or identified human rights respect as an opportunity to improve their operations and the communities and societies in which they work. In all three scenarios, OHCHR-Colombia helps build bridges between communities, the State and business to measurably improve the situation of human rights.

88. In a report issued in 2013, the Comptroller General outlined the damaging social and environmental consequences of mining activities and their negative impact on the rights of indigenous and Afro-Colombian peoples, as well as of farmers. The Rural Development Institute documented that businesses had illegally obtained more than 600,000 hectares of land.

89. OHCHR-Colombia recognizes the importance of initiatives, such as the Comité Minero Energético, Guías Colombia and the partnership with the Global Compact, and will continue to support these efforts to promote business compliance with the Guiding Principles on Business and Human Rights. OHCHR commends the organization of the first Latin American and Caribbean Regional Forum on Business and Human Rights, held in August 2013.

90. The High Commissioner reiterates the view that the private sector has an essential role to play in fostering successful peace and human rights consolidation processes. She commends the launching of the "Business for Peace" initiative, aimed at promoting private sector commitment in post-conflict situations.

3. Other human rights challenges

(a) Post-demobilization groups

91. Disputes, violence and social control by post-demobilization groups and criminal organizations continue to affect the full range of human rights of the population, and particularly those of human rights defenders, community leaders, civil servants, police officers and land restitution claimants. In the department of Antioquia, OHCHR-Colombia registered 14 massacres attributable to these groups. In Buenaventura (department of Valle del Cauca), eight cases of dismemberment of persons were registered, and three in Barranquilla. Poverty, social exclusion, insecurity and lack of opportunities continue to make young people and children vulnerable to recruitment, use, exploitation and sexual violence by these groups.

92. The High Commissioner commends the considerable efforts made by the authorities to dismantle post-demobilization groups. However, the gravity of the problem and the likelihood that a peace agreement would unleash further violence by and among these groups requires a stronger comprehensive approach combining security and justice with actions to fight poverty and social exclusion at all levels.

(b) Discrimination

93. OHCHR-Colombia continues to document cases of discrimination on the basis of ethnicity, race, gender, sexual orientation, disability, medical condition, age and political opinion.

94. In 2013, public officials in various parts of the country made discriminatory statements about Afro-Colombians, women and LGBTI persons. As at November, police had registered 52 killings of LGBTI persons, compared with 41 in 2012.

(c) Economic, social and cultural rights

(i) Prior consultation and consent

95. During mass demonstrations in 2013, indigenous and Afro-Colombian protesters frequently demanded information on the number of concessions granted for natural resource exploitation on their lands, and whether prior consultation and consent requirements had been followed in accordance with international standards. Demonstrators demanded that concessions granted without proper procedures be cancelled. Representatives of indigenous peoples and the Government agreed to establish an ad hoc commission to address this matter.

96. In 2013, OHCHR-Colombia supported the efforts of the Ministry of the Interior to better respect and protect the rights of indigenous and Afro-Colombian peoples. As an important step forward, the Ministry recognized the need to adopt prior consultation protocols with each people. However, personnel changes in the Ministry have made it difficult to properly see through these efforts.

97. OHCHR-Colombia is aware of cases where businesses have exerted an inappropriate influence on local and national authorities, as well as on some ethnic group representatives. Prior consultation protocols will greatly assist in making the exercise of the right more transparent. It is important that prior consultation and consent not be considered an obstacle, but rather a solution for the realization of the collective rights of indigenous and Afro-Colombian peoples.

98. In 2013, the Rural Development Institute received protection requests from 79 indigenous peoples and 45 Afro-Colombian communities, the majority from the

departments of Antioquia, Cauca, Chocó, Guaviare, Nariño and Valle del Cauca. In February, the Constitutional Court ordered the implementation of protection measures specifically designed for 12 Afro-Colombian communities threatened by large-scale development projects in the department of Nariño.

(ii) Progressive realization

99. Despite efforts to reduce poverty and inequality, there is an insufficient acknowledgement of the need for radical structural change and innovation to address the very different realities of Colombians. In some municipalities, poverty rates continue to be up to four times as high as in certain cities, reflecting the lack of enjoyment of the full spectrum of human rights. Too many rural areas continue to have little or no access to State institutions and services beyond the military.

100. In 2013, OHCHR-Colombia discussed with the Administrative Department of Social Prosperity how Colombia could better comply with its international obligations to satisfy economic, social and cultural rights in the fight against poverty and, on the basis of its field monitoring, provided the Department with a report on how to reorient institutional efforts in this regard. The Government has demonstrated its readiness to apply a human rights-based approach to poverty reduction.

101. According to a multidimensional poverty index used by National Department of Statistics, in 2013 the percentage of rural homes without access to drinking water was 15 times higher than in urban areas; the illiteracy rate, three times higher; and the school truancy rate was 2.6 times higher. In the department of Chocó, where Afro-Colombians represent 82.1 per cent and indigenous peoples 12.7 per cent poverty affects 68 per cent of the population.

102. Many obstacles remain before the full realization of the right to education. For example, in the south of the department of Bolivar, the beginning of the academic year was delayed for at least four months because teachers had not been hired on time. OHCHR-Colombia found similar problems in Tierralta (department of Córdoba), where, in April, 8,219 children were still unable to attend school.

103. The Ombudsperson's Office identified a number of barriers to access to health-care services and medicines. In particular, it found that patients, including people living with HIV/AIDS, had to resort to petitions to the Constitutional Court to obtain services and medicines that should have been available under the Mandatory Health Plan. A total of 420,000 such health-related petitions were registered in 2013.

IV. Recommendations

104. **In the light of the findings made by OHCHR-Colombia, the High Commissioner:**

(a) Congratulates the Government of Colombia on its determined pursuit of a negotiated end to the internal armed conflict and its ongoing efforts to meet its international human rights obligations;

(b) Acknowledges the Government's efforts to implement her previous recommendations and those of the entire international human rights system, and urges it to continue and to strengthen them;

(c) Reminds all parties to the armed conflict that transitional justice measures can only be an effective tool if the institutions and individuals involved

demonstrate a meaningful commitment to truth, the restoration of victims' rights and reconciliation;

(d) Requests, in this regard and as an act of commitment to the Colombian people and to peace, FARC-EP and ELN to deliver comprehensive, specific information with regard to civilians and police and military personnel who have disappeared or are in their power, and on the location of mines and other improvised explosive devices. FARC-EP and ELN should immediately cease recruiting and using children and collaborate with the Government to create and implement a plan of action to effectively disengage children in their ranks;

(e) Urges the Government to implement a transparent and public monitoring and reporting mechanism with third-party oversight to ensure that the agreements reached after public protests are fully implemented;

(f) Encourages the Government to create a mechanism comprising both governmental and civil society actors to identify good and bad practices during social protests, and to make recommendations for local, departmental and national authorities to improve their capacity to respond to demonstrations in conformity with international human rights standards;

(g) Calls upon the Government to create protocols defining the procedures and mechanisms needed to respect the right to prior consultation and consent with each of the indigenous peoples and Afro-Colombian communities, and to ensure their faithful implementation, and to put an end to government criticism of this right;

(h) Recommends that, with regard to the fight against impunity for human rights violations and crimes against human rights defenders, the Office of the Attorney General establish new and clear internal performance objectives, benchmarks and incentives based on the number of successful prosecutions rather than of the number of investigations initiated;

(i) Calls upon the Government to comply in a focused manner with its international obligations for the progressive realization of economic, social and cultural rights, including by integrating progressive targets into municipal, departmental and national budget cycle management;

(j) Urges the State to create and implement a policy with benchmarks and public oversight to ensure increased diversity and representativeness at all levels of public institutions based on ethnic, gender and other criteria;

(k) Requests the Government to work with OHCHR-Colombia to document how cooperation with the United Nations human rights system is contributing to developments in the situation of human rights in Colombia over the past 16 years, and to identify best practices to share with the international community.